

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 10/531,996 Confirmation No.: 8890
Applicant : Yongten Benjamin PENG, et al.
I.A. Filed : April 20, 2005
Title : PARTICULATE MATERIALS AND COMPOSITIONS FOR RADIOTHERAPY
TC/Art Unit : 1618
Examiner: : Melissa Jean PERREIRA
Docket No. : 58768.000007
Customer No. : **21967**

MAIL STOP PATENT TERM EXT.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)**

Dear Sir:

Applicants request reconsideration under 37 C.F.R. § 1.705(b) of the USPTO's patent term adjustment for the above-identified application ("the '996 application").

To date, the issue fee has not been paid. Accordingly, this request is timely. *See* 37 C.F.R. § 1.705(b). In accordance with 37 C.F.R. § 1.705(b)(1), please charge the fee set forth in 37 C.F.R. § 1.18(e) (\$200) to the undersigned's **Deposit Account No. 50-0206**. In the event any additional fees are required for consideration of this request, the USPTO is authorized to charge these fees to the undersigned's Deposit Account No. 50-0206.

Remarks begin on page 2.

REMARKS

The USPTO has determined that patent term adjustment (“PTA”) for the ‘996 application is 463 days. *See Exhibit A* (Determination of Patent Term Adjustment). As discussed below, this determination is in error because the USPTO failed to issue a restriction requirement within fourteen months. *See* 37 C.F.R. § 1.702(a).

The following facts are relevant for determining PTA for the ‘996 application:

- April 20, 2005 – ‘996 application is filed and requirements under 35 U.S.C. § 371 are completed. *See Exhibit B* (DO/EO Worksheet).
- June 20, 2006 – fourteen month date from filing of ‘996 application.
- February 11, 2009 – restriction requirement is mailed.

The USPTO’s delay from June 20, 2006 to February 11, 2009 is 967 days. The USPTO, however, erroneously calculates its delay as 464 days. Accordingly, Applicants respectfully request that the ‘996 application be granted a minimum PTA of at least 967 days.¹

In view of the above remarks, it is respectfully requested that this Request for Reconsideration of Patent Term Adjustment be favorably considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a minimum patent term adjustment of at least 967 days.

Respectfully submitted,

HUNTON & WILLIAMS LLP

Date: February 17, 2011

By: _____


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¹ The USPTO asserts that Applicants delayed one day. Applicants respectfully disagree because Applicants filed a response—due on a Sunday—the following Monday. *See* Response filed April 5, 2010.

Exhibit A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,996	04/20/2005	Yongren Benjamin Peng	58768.000007	8890
21967	7590	11/18/2010	EXAMINER	
			PERREIRA, MELISSA JEAN	
			ART UNIT	PAPER NUMBER
			1618	
DATE MAILED: 11/18/2010				

HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 463 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 463 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Exhibit B

DO/EO WORKSHEET

U.S. Appl. No.

10/531996

International Appl. No.

US 2005 /007201

Application filed by : 20 months 30 months

WIPO PUBLICATION INFORMATION :

Publication No.: WO2005/087294 A1 Publication Language : English Japanese
 German French Other:

Publication Date: Sept 22, 2005

Net Published: U.S. only designated EP request

Screening Done by :

JH

INTERNATIONAL APPLICATION PAPERS IN THE APPLICATION FILE :

- | | |
|---|--|
| <input checked="" type="checkbox"/> International Application (RECORD COPY) | <input type="checkbox"/> International Appl. on Double Sided Paper (COPIES MADE) |
| <input type="checkbox"/> Article 19 Amendments | <input type="checkbox"/> Request form PCT/RO/101 |
| <input type="checkbox"/> PCT/IB/331 | <input checked="" type="checkbox"/> PCT/ISA/210 - Search Report |
| <input type="checkbox"/> PCT/IPEA/409 IPER (PCT/IPEA/416 on front) | <input type="checkbox"/> Search Report References |
| <input type="checkbox"/> Annexes to 409 | <input type="checkbox"/> Other: |
| <input checked="" type="checkbox"/> Priority Document (s) No. <u>1</u> | <u>237, 373</u> |

RECEIPTS FROM THE APPLICANT (other than checked above) :

- | | |
|---|--|
| <input checked="" type="checkbox"/> Basic National Fee (or authorization to charge) | <input checked="" type="checkbox"/> Preliminary Amendment(s) Filed on :
<u>Apr 20, 2005</u> |
| <input checked="" type="checkbox"/> Description | <input checked="" type="checkbox"/> Information Disclosure Statement(s) Filed on :
<u>Aug 16, 2005</u> |
| <input checked="" type="checkbox"/> Claims | <input type="checkbox"/> Assignment Document |
| <input checked="" type="checkbox"/> Words in the Drawing Figure(s) - (# of dwgs. <u>14</u>) | <input type="checkbox"/> Power of Attorney/ Change of Address |
| <input type="checkbox"/> Article 19 Amendments | <input type="checkbox"/> Substitute Specification Filed on :
1. _____ 2. _____ |
| <input type="checkbox"/> english transl. of annexes NOT present | <input type="checkbox"/> Small Entity |
| <input type="checkbox"/> entered <input type="checkbox"/> not entered :
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<input type="checkbox"/> no charge was paid at the time of filing |
| <input type="checkbox"/> Annexes to 409 | <input type="checkbox"/> DNA Diskette <input type="checkbox"/> Sequence Listing |
| <input type="checkbox"/> english transl. of annexes NOT present | <input type="checkbox"/> Other: 1. _____ 2. _____ |
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NOTES : I.A. used as Specification Other:

35 U.S.C. 371 - Receipt of Request (PTO-1390)

Apr. 20, 2005

Date Acceptable Oath/Declaration Received

Apr. 20, 2005

Date of Completion of requirements under 35 U.S.C. 371

Apr. 20, 2005

102(e) Date

Sept. 05, 2006

Nov. 29, 2006

Date of Completion of DO/EO 903 - Notification of Acceptance

Date of Completion of DO/EO 905 - Notification of Missing Requirements

Date of Completion of DO/EO 906 - Notification of Missing 102(e) Requirements

Date of Completion of DO/EO 907 - Notification of Acceptance for 102(e) Date

Date of Completion of DO/EO 909 - Notification of Abandonment

Date of Completion of DO/EO 911 - Application Accepted Under 35 U.S.C. 111

Date of Completion of DO/EO 916 - Notification of Defective Response

Date of Completion of DO/EO 910 - Notification to Comply w/ Seq. Requirements